

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-006639

01/15/2009

HONORABLE LISA DANIEL FLORES

CLERK OF THE COURT

J. Carlson

Deputy

IN RE THE MARRIAGE OF
KYMBERLY JOHNSON

JASON B CASTLE

AND

JEFFREY N COCKER

BARBARA L FUQUA

DOCKET-FAMILY COURT CCC
FAMILY COURT SERVICES-CCC

JUDGMENT/DECREE

A trial was held November 19, 2008 on Petitioner/Mother's Petition for Dissolution, filed October 9, 2007. Respondent/Father was served October 21, 2007 and filed a response December 5, 2007.

The parties were married October 19, 1996 and are the parents of Kameron (born January 18, 1996), Katiebelle (born May 12, 1997) and Madison (born December 28, 1999).

Prior to trial, the parties reached agreements on custody and parenting time, and the agreements are incorporated in this Decree. During this litigation, Father filed for bankruptcy and the debts in his name were discharged. The issues for resolution by the Court are child support, spousal maintenance, allocation of debts and attorney's fees. In addition, the parties disagreed about which of them should be ordered to provide medical coverage for the children, whether the Court should allocate to Mother a portion of the children's travel expenses to visit Father and whether the costs of extracurricular activities should be included in the child support calculation.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-006639

01/15/2009

Based upon the evidence presented, the Court enters the following additional findings and orders:

I. DISSOLUTION OF MARRIAGE.

THE COURT FINDS that at least one of the parties has been domiciled in the State of Arizona for more than 90 days immediately preceding the filing of the Petition; that the conciliation provisions of A.R.S. § 25-381.09, and the domestic relations education provisions of A.R.S. §25-352 either do not apply or have been met; that the marriage is irretrievably broken and there is no reasonable prospect for reconciliation.

To the extent it has jurisdiction to do so, the Court has considered and made provisions for maintenance and disposition of property, and, where applicable, support, custody and visitation.

IT IS ORDERED that the marriage heretofore existing between the parties is dissolved, and each party is returned to the status of a single person effective upon the signing and entry of this Decree.

II. CUSTODY AND PARENTING TIME.

THE COURT FINDS that the minor children who are the subject of this action lived in Arizona with a parent, or a person acting as a parent, for at least six consecutive months or more prior to the commencement of this action such that Arizona is the home state of the children vested with jurisdiction to make a child custody determination pursuant to A.R.S. §25-1031(A)(1).

The parties' oldest child, Kameron, was born prior to the parties' marriage. Based on the parties' testimony, the Court finds that Kymberly Johnson and Jeffrey Cocker are the biological parents of Kameron (born January 18, 1996).

IT IS ORDERED establishing paternity of the minor child, Kameron (born January 18, 1996), and declaring Jeffrey Cocker is his natural father.

THE COURT FINDS that the parties have reached an agreement for joint legal custody in this case which is fully set forth on the record at the Resolution Management Conference, held February 4, 2008. The parties also agreed to a long distance parenting plan.

THE COURT FURTHER FINDS that the agreement of the parties is not unfair, is reasonable, and is in the best interests of the parties' minor children.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-006639

01/15/2009

IT IS ORDERED approving the agreement of the parties as a binding agreement pursuant to Rule 69, Arizona Rules of Family Law Procedure, and awarding the parties joint legal custody of their minor children, Kameron (born January 18, 1996), Katiebelle (born May 12, 1997) and Madison (born December 28, 1999).

Based on the parties' agreements, it is ordered that Mother is designated primary residential parent and the children shall reside with Mother at all times except during Father's parenting time.

IT IS FURTHER ORDERED that Father shall be entitled to exercise parenting time as follows:

- During the third weekend of January in all years from after school on Friday to return to school on Tuesday.
- During Spring Break in all even numbered years beginning with 2010 from the Friday that school is let out through the Sunday prior to school reconvening.
- During Summer, Father shall have eight weeks of parenting time from June 1st to July 31st.
- During the second weekend of September in all years from after school on Friday to return to school on Tuesday.
- During Thanksgiving in odd-numbered years, from after school Wednesday until Sunday evening.
- During Winter Break, the time shall be divided so Father has the first half in even-numbered years and the second half in odd-numbered years. The first half shall include Christmas Eve and Christmas Day and the second half shall include New Year's Eve and New Year's Day.

IT IS FURTHER ORDERED that the parties shall provide each other with 60 days written notice of any travel with the minor children.

IT IS FURTHER ORDERED that both parties shall have reasonable telephone access with the minor children during normal waking hours when they are with the other parent.

IT IS FURTHER ORDERED that the parties shall use the services of a private mediator, Parenting Coordinator or Conciliation Services of this Court to resolve any disputes, problems or proposed changes regarding this custody and/or parenting time order prior to seeking further relief from the Court.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-006639

01/15/2009

III. CHILD SUPPORT ORDER.

THE COURT FINDS that the relevant financial factors required to be included, and the discretionary allowances and adjustments which the Court will allow, for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet which the Court hereby incorporates and adopts as its findings with respect to child support.

Parties' Incomes

The parties disputed each other's income for the purposes of calculating child support.

Father works in the field of construction; he testified that he lost his job in Arizona and could find no other employment. As a result, he moved to Hawaii where he could work for his father. Father earned \$5,800 per month while working in Arizona. He testified that in Hawaii, he was earning \$5,600 per month, but it was about to be reduced to \$3,600 per month. Mother asked that he be attributed with the higher earnings since he voluntarily went to Hawaii.

Mother has worked in the recent past as a restaurant manager earning \$63,380 in 2004, \$30,525 in 2005 and \$103,458 in 2006. She testified that she decided to take a lesser-paying job as a server, grossing \$1,100 per month, to be able to spend more time with the children. Father asked that she be attributed with the higher earnings since she voluntarily reduced her income. Father also asked that Mother be attributed with additional monthly income because she is supported by her boyfriend. Mother's Affidavit of Financial Information lists over \$10,000 per month in expenses, but she admitted that her boyfriend pays the vast majority of the expenses, as he has since they began living together approximately a year prior to the trial.

THE COURT FINDS that neither parent reduced their incomes for the purpose of affecting the outcome of the child support calculation. Father lost his job and was unable to find another similar job in Arizona. Mother quit her job as a restaurant manager to avoid the late nights and be available to the parties' children before and after school, a necessity especially after Father moved away. Mother has received regular and continuing financial support from her boyfriend, and had no expectation that this would end.

THE COURT FINDS that Father is capable of earning \$5,600 per month. The Court finds that Mother is capable of earning \$1,100 per month, and that the regular and continuing contributions made by her boyfriend to the living expenses of Mother and the children shall be included at the rate of \$3,000 per month. Mother's total monthly earnings shall be \$4,100. These amounts are included in the child support worksheet.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-006639

01/15/2009

Medical and Dental Insurance

Mother requested that she be assigned the responsibility for providing the children's health insurance at a monthly cost of \$285. She did not know the cost of dental insurance. She requested the responsibility because Father let the insurance lapse and there was no coverage when one of the children had a medical emergency. Father testified that he did not purposely let the insurance lapse; he failed to give the company a forwarding address when he moved. He agreed to pay the emergency room bill for the parties' child. Father testified that the cost of medical insurance for the children was \$329 per month, and the cost of dental insurance is \$96.76 per month.

THE COURT FINDS that it is best for Mother to have the responsibility to provide medical and dental insurance at a total cost of \$400 per month for the parties' minor children. The children reside primarily with her, and she is the parent most likely to take them to the doctor or dentist for appointments. This amount is included in the child support worksheet. It was unclear who was paying for insurance at the trial; if Father is paying for coverage, effective February 1, 2009, Mother shall reimburse Father for the insurance premiums until such time as she takes over responsibility with the insurance company.

Unreimbursed Medical Expenses for Orthodontia

Father disagreed with being held responsible for orthodontia and other unusual dental care for the children; he testified that it was cosmetic. Mother testified that all three children needed, or would need, orthodontia or other dental care. The parties' son knocked out his two front teeth and would need periodic replacements as he grows. One daughter's permanent teeth came in while her baby teeth were still there and she will need orthodontia. The other daughter has "space issues" and will need orthodontia.

THE COURT FINDS that orthodontia and other unusual dental care for the children as described are not cosmetic and both parties shall be responsible for their share of the unreimbursed costs in proportion to their incomes.

The Court notes that Father raised an issue in the parties' joint pre-trial statement about responsibility for injuries to the children when the children are with one parent; however, this issue was not addressed at trial and the Court considers it abandoned.

Extracurricular Activities

The parties' daughters participate in dance, their son participates in athletics, and all three children have school field trips for which there are extra charges. Mother wanted all these items included in the child support calculation and Father objected.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-006639

01/15/2009

THE COURT FINDS that while extracurricular activities certainly benefit children, they are not required and neither parent should be forced to pay for an activity he or she did not agree to and cannot afford. School field trips are another matter; a child's failure to attend could result in that child being ostracized.

THE COURT FURTHER FINDS that extracurricular expenses for dance and athletics shall not be included in the child support calculation. The Court further finds that the cost of school field trips is included as part of the general cost of raising children; however, if any one field trip costs more than \$100.00, Father shall reimburse Mother for the cost of that field trips based on the same percentage as the allocation of unreimbursed medical expenses. The Court notes that "field trip" is defined as a class trip to a location away from the school which is for educational purposes and is part of the class curriculum. "Field trip" does not include a trip authorized or arranged by the school if it is not for educational purposes, e.g. a class trip to Disneyland.

IT IS ORDERED that Father shall reimburse Mother his proportionate share of the cost of a child's field trip if the field trip costs more than \$100.00. Any field trips that cost up to \$100.00 are the responsibility of Mother. If Mother incurs the cost of a field trip that exceeds \$100.00, she shall provide a copy of the bill, invoice or receipt to Father within 30 days of the event; failure to comply with this provision shall result in waiver of the right to reimbursement. Father shall reimburse his share of the cost within 30 days of receiving the invoice or receipt unless his share exceeds \$100; in that case, he shall pay within a reasonable time.

Travel Costs Associated with Parenting Time

Father requested that Mother pay a share of the travel costs for his parenting time with the children, based on the percentages established in the child support worksheet. Mother agreed to pay 20% of the costs for the children's travel, but nothing toward the cost of Father's travel to Arizona when he comes to visit the children.

THE COURT FINDS that an allocation of the travel expenses is necessary to help ensure that the children have continued contact with Father. Pursuant to the Child Support Guidelines, the amount of child support shall not be reduced for this purpose.

IT IS ORDERED that Mother shall pay the cost of airfare for one child, and Father shall pay the cost of airfare for two children, every time the children fly from Arizona to Hawaii and back. Father shall advance the costs and Mother shall reimburse him within 30 days after he provides her proof of his payment. All costs for Father to travel to Arizona shall be borne by Father.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-006639

01/15/2009

Other Factors

Neither party has children from another relationship. Mother was not awarded spousal maintenance, as discussed below. Neither party incurs any child care costs. Father was given a .105 adjustment for exercising between 73 and 87 days per year as parenting time.

IT IS ORDERED that, effective November 1, 2007, Father shall pay to Mother as and for child support the sum of \$1,016.94 per month. This amount shall be payable through the Support Payment Clearinghouse on the 1st day of each month commencing February 1, 2008 by Wage Assignment.

LET THE RECORD REFLECT an Order of Assignment is initiated electronically by the above-named deputy clerk.

The Court notes that on June 24, 2008 the parties entered into an agreement for temporary child support in the amount \$650.00 per month. This amount was without prejudice for either party to argue a different amount. The above order that Father owes Mother \$1,016.94 per month effective November 1, 2007 creates an immediate child support arrearage for Father, but the Court lacks sufficient information to determine the amount of the arrearage. Once the amount of Father's arrearage is established, Mother shall be entitled to a judgment in that amount. Interest shall not accrue on the arrearage until the judgment is signed.

IT IS FURTHER ORDERED that at any time an Order of Assignment is not paying the child support obligation in full, Father shall make full and timely payments directly to the Support Payment Clearinghouse.

IT IS FURTHER ORDERED that Mother shall provide medical insurance for the benefit of the parties' minor children, and shall provide an insurance card and claim filing information/forms to the other parent. All medical, dental and orthodontia expenses incurred for the health of the children not covered by insurance shall be paid 58% by Father and 42% by Mother. The party who incurs the cost of unreimbursed medical expenses shall provide a copy of the invoice or receipt to the other party within 30 days of the event; failure to comply with this provision shall result in waiver of the right to reimbursement. The other party shall reimburse his or her share of the cost within 30 days of receiving the invoice or receipt unless that party's share exceeds \$100; in that case, he or she shall pay within a reasonable time.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-006639

01/15/2009

IT IS FURTHER ORDERED that the federal tax exemptions applicable to the parties' children shall be divided between the parties as follows:

Father. Father is entitled to utilize the exemptions for the parties' two older children in all tax years commencing with 2009 provided he is current in the payment of all current child support and child support arrearage payments due by December 31 of the year applicable to the exemption. If these conditions are met, Mother shall execute the necessary IRS forms to transfer the exemptions to Father. If not, Mother shall be entitled to claim the exemptions.

Mother. In addition to any exemptions which Father is not eligible to utilize as set forth above, Mother is entitled to utilize the exemptions for all three children for tax year 2008, and for the parties' youngest child in all tax years commencing with 2009.

IT IS FURTHER ORDERED that every 24 months hereafter, the parties shall exchange affidavits of financial information, including tax returns and earnings statements.

IV. SPOUSAL MAINTENANCE.

Mother requested spousal maintenance in the amount of \$450 per month for 48 months; she plans to go to school to become self-sufficient. Father objected; he testified that Mother is able to earn sufficient income to meet her reasonable needs.

THE COURT FINDS that Mother failed to prove that she qualifies for an award of spousal maintenance pursuant to any of the reasons stated in A.R.S. § 25-319(A). Neither party will be awarded property to provide for that party's reasonable needs. Mother is able to be self-sufficient through appropriate employment, but chooses to work in a field that pays less. While her reason (to be with the children) may be a good one, that does not justify an award of spousal maintenance. There was no evidence presented that she contributed to the educational opportunities of Father. The marriage was not of long duration and Mother is not of an age that may preclude the possibility of gaining employment adequate to be self-sufficient.

V. PROPERTY DIVISION.

No property issues were raised by either party.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-006639

01/15/2009

IT IS ORDERED awarding to Father as his sole and separate property, subject to any liens or encumbrances thereon, all vehicles, household furniture, furnishings and appliances, and other personal property currently in his possession.

IT IS FURTHER ORDERED awarding to Mother as her sole and separate property, subject to any liens or encumbrances thereon, all vehicles, household furniture, furnishings and appliances, and other personal property currently in her possession.

VI. COMMUNITY DEBTS.

The parties disputed allocation of debts that were incurred during the marriage, but in Mother's name only. During the pendency of this litigation, Father filed and completed bankruptcy, and all debts in his name were discharged. Father testified that if any of the debts in Mother's name are allocated to him, he will attempt to reopen his bankruptcy to have those debts discharged as well. Mother testified that debts for the medical care their son received after the 2005 accident remain unpaid, and that she has two credit card accounts with balances that were accrued during the marriage. All debts are in Mother's name only. Father disputed that any of the debts were community.

Notwithstanding Father's threat to re-open his bankruptcy, the Court finds that all disputed debts were incurred during the marriage and that all three are presumed to be for the benefit of the community. No evidence was provided as to the exact amounts of the bills or the names of the creditors and the debts were not listed in Mother's Affidavit of Financial Information (Exhibit 12); however, the debts were listed on pages seven and eight of the parties' joint pre-trial statement. Although this is not evidence, the Court reviewed this information for the purpose of determining how to equitably divide the debts.

THE COURT FURTHER FINDS that it is equitable to allocate the medical debts to Father and the credit card debts to Mother. If the amounts in the joint pre-trial statement are accurate, Father is responsible for \$6,878.87 (Olympic Collection, Eskanos & Adler, Evergreen Professional and PSC Inc.) and Mother is responsible for \$7,598.02 (Midland Credit Management and SST/CIGPFT in the compromised amount).

IT IS FURTHER ORDERED that Father shall pay and hold Mother harmless from the debts owing to Olympic Collection, Eskanos & Adler, Evergreen Professional and PSC Inc..

IT IS FURTHER ORDERED that Mother shall pay and hold Father harmless from the debts owing to Midland Credit Management and SST/CIGPFT.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2007-006639

01/15/2009

IT IS FURTHER ORDERED that each party shall pay any debt incurred by him or her respectively since the date of the parties' separation.

VII. ATTORNEY'S FEES.

The Court has considered the financial resources of both parties and the reasonableness of positions taken in this litigation in accordance with A.R.S. §25-324. Neither party has substantially greater financial resources than the other; at this time, both are struggling. Both parties took unreasonable positions in this litigation and both are responsible for additional attorney's fees being incurred. Good cause appearing,

IT IS ORDERED that each party shall bear its own costs and attorney's fees incurred in this matter.

IT IS ORDERED signing this minute entry as a formal written Order of the Court, pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/S/ HON. LISA D. FLORES

HONORABLE LISA DANIEL FLORES
JUDICIAL OFFICER OF THE SUPERIOR COURT

FILED: Exhibit Worksheet

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.